The U.S. Constitution

Critical Questions
1. How and why was it formed?
2. What vision of government does it embody?
3. How democratic is it, and how well does it serve us?

We have considered question #1, and will continue to examine question #3 throughout the course. This lecture on Federalist #10 will focus on the broader vision of government embodied in the Constitution.
Madison wrote Federalist #10 as part of a set of essays in defense of the new Constitution, which he helped author.

(Over, 50 essays were written, some by John Jay and others by Alexander Hamilton, whom we have already talked about.)
The Federalist Papers

What are they?

A series of essays by Madison, Hamilton and Jay meant to encourage people to ratify (approve) the new Constitution and thus create a more powerful central government.
The Revolutionary Mindset: 1776

- Distant and powerful government is a threat to liberty.
- This leads to the Articles of Confederation which created an extraordinarily weak central government that left most power to the states.

A little review.
The Framers: 1787

• A younger, more nationalistic group.
• Feared government instability: Shay’s Rebellion
• Desired a stronger central government that could manage the “excesses” of democracy and lead the nation.

Review continued.
Fed. #10

• Claims that a strong, somewhat distant, government will preserve liberty rather than be a threat to it.
• Thus, turns revolutionary era common sense on its head.

Federalist #10 represents a radical departure from the political thinking that existed during the revolutionary era.
Madison’s View of Democracy

• “Democracies have ever been spectacles of turbulence and contention… as short in their lives as they have been violent in the deaths.”
  *Fed #10*

• But….. He wants to maintain the “spirit and form of popular government”.
  *Fed #10*

All the yellow writing in this lecture are direct quotes from Federalist #10. After you are done with this lecture, it would really behoove to read it as doing so will really help you see how it all weaves together.

Look for them as your read through it.

The first quote probably is a reflection of the experiences of Ancient Athens and maybe Renaissance Florence which both had turbulent and short lived (albeit glorious) democracies.

Thinking about the second quote, it seems that Madison is suggesting that he wants something less than democracy. If I say I followed the “spirit” of the law, it is usually a way of saying that I violated the “letter” of the law.
The Question of Fed #10:

- How can we have popular democracy without it degenerating into mob rule?

However, he clearly does not want to do away with popular government (democracy) altogether - the trick for him was to find a balance - something between mob rule and tyranny by a monarch or aristocracy.
The Problem: Factions

• What is meant by a faction?

“a number of citizens … who are united by some common impulse of passion, or interest, adverse to the rights of other citizens.”

The main focus of the essay is faction: the problems factions present in a democracy, and how our federal republic is superior to a pure democracy because it can deal with the problem of faction.

Today, we would most likely use the term “special interest group” to describe what Madison calls a faction.
He explains that factions are a natural outgrowth of a free society. They exist because we have different tastes, and simply view things differently …… but most importantly, he says, factions exist because of the uneven distribution of wealth that exists in a free society. In other words the biggest source of conflict in society is the battle between the “haves” and “have nots”, the rich and the poor.
Is He a Marxist?

• “The regulation of these various and interfering interests form the principal task of modern Legislation.”

• The goal is clearly not to eliminate class difference, but rather to prevent conflict from becoming destabilizing.

Karl Marx, and socialists in general, tend to agree that class division is the main source of societal conflict; however, while they say the solution is to distribute wealth evenly, Madison is no socialist as he sees that one’s right to the property they earn is a fundamental aspect of freedom (straight from Locke). Yet, he still wants to avoid class warfare.
Factions and Democracy

• “If a faction consists of less than a majority, relief is supplied by the republican principle.”

We will come back to the issue of class warfare in a minute. But first notice this:

A faction (group with a special interest) can be either a majority or a minority (more than half or less than half) of society at large. In a democracy, when a faction is in the minority, it will get outvoted and therefore will have little political power and thus not be a threat to those who disagree with its aims. This is what he means when he says republicanism (a form of democracy) supply relief when a faction is in the minority.
Tyranny of the Majority

• However, when a faction is a majority, it can “sacrifice to its ruling passions the public good and rights of others.”

• This was Madison’s great concern in Fed. #10.

The problem, in a democracy, comes when a faction is more than 50%, because then it can vote in things that might be very harmful to the other 49%. This is sometimes referred to as “tyranny of the majority”. For example,

If the majority voted to force us to swear allegiance to the Shiva or any other god, or outlawed the right to eat chocolate, for instance, those laws could be considered tyrannical. One could think of all sorts of things a majority might enact that could be oppressive. Of course our system of checks and balances and the Bill of Rights were put into the Constitution of prevent this sort of stuff - but these solutions are not what Madison is going to focus on in this particular essay. (In fact the Bill of Rights did not even exist when he wrote the essay as it was added to the Constitution later.)
Tyranny of the Majority And Class

- What is the greatest source of faction?
- Who is the majority, the poor or the wealthy?
- Thus, what is the central danger of majority rule?

To pull some pieces together and see where Madison might be coming from, let’s review two key points he has made.

1. The most durable source of faction if differences in wealth.
2. A faction in a democracy is most dangerous when it is a majority.

Of course, when you think about it, it is clear that the poor has always outnumbered the wealthy. Thus the real danger in a democracy is that the poor will oppress the rich. Perhaps they would even vote to take away or tax the wealthy for their own benefit.

The last half of the essay shows how our Constitution is intended to prevent this from happening: How it can allow some semblance of political freedom (democracy) without mob rule violating the interests of those who are more successful (and thus prevent class differences from devolving into class warfare).
The Solution:

• Create a large republic, that is a large country based on representative democracy.

• Madison offers two rationales for this.

In the past, it was believed that democracies had to be small in order to give everyone a chance to be heard. This seemed to be true as a practical matter as it would simply be impossible for the people to gather together. (Athens was small enough that all citizens were part of the assembly that made the laws.) Furthermore, it was believed that if a country was too big, it would be too complicated to be ruled by the people.

The Constitution stands this wisdom on its head, by saying that only a LARGE country is suitable for self rule. Because our country will be large and because it will be based on “indirect” or representative democracy rather than direct democracy, the problem of factions disrupting the peace and threatening freedom will be diminished.
Rationale #1:

- Giving power to elected representatives allows us to be governed by those whose “patriotism and love of justice will be least likely to sacrifice (the country’s interest) to temporary or partial considerations.”

The first defense of a large republic is the filtering effect that representation creates. Rather than the people ruling directly, our constitution relies on a set of elected lawmakers, who in Madison’s eyes would most likely be wiser and more judicious than the common folk. People who are able to rise up and get elected to office (especially in large districts) will be the cream of the crop and serve to moderate the temporary and often un-rational passions of the majority. This is a central notion of republicanism.
Rationale #2

- The question of size:
  - SF as a case study: city wide elections

- The creation of a large country with a strong central government will enervate the majority, making them relatively powerless, and thus protect the rights of the minority.

He goes into a lengthy discussion of how to best ensure that representatives (people elected to represent us in government) are virtuous, just and wise. The trick, he says, is in making the districts neither too big nor too small. If districts are too big, the people’s voice will be diminished; however, if district that selects a representative is too small, then the elected official is too likely to be beholden to one faction (special interest group).

While this may seem abstract and difficult to understand, some examples should help make it clear. In S.F. our Board of Supervisors (which is like our city council) are elected by neighborhoods - thus we have a gay supervisor from the Castro, an African-American representing Bayview-Hunter’s Point, a Hispanic from the Mission district and so forth. Because districts are small and homogenous, the elected officials basically only have to appeal to their own faction rather than the broader interests of the city. Indeed when this was first put into place in 1979, the Board became much more diverse while at the same time relations on the board became so contentious that one supervisor (Dan White) assassinated another (Harvey Milk - the country’s first openly gay elected official). (Watch for the movie to come out.) When we had city-wide elections, candidates had to appeal to a wider range of voters, and thus had to be fairly moderate in their views. Of course, this also meant that minority groups had much less representation on the Board. Also, because running a city wide campaign cost a lot of money, successful candidates had to either be wealthy or have access to those who were.
Rationale #2

• The question of size:
  – SF as a case study: city wide elections

• The creation of a large country with a strong central government will enervate the majority, making them relatively powerless, and thus protect the rights of the minority.

Thus, Madison favored districts that were large enough to lead to the election of representatives who were moderate in the views and not beholden to one special interest (faction).

With this in mind, the Senate was designed to create stability while the House of Representatives would maintain the “spirit” of democracy as House members are elected by relatively small districts while Senators represent entire states. To become a senator from California, you have to have a tremendous amount of money for a state wide campaign, and be broad enough appeal to voters from cities, rural areas, many ethnic groups, etc. Running for the House is a lot cheaper and because districts are small and you can appeal to a narrower constituency. For example, if your are running to represent the district that covers S.F. you can afford to be quite liberal as you do not have to worry about offending the conservative voters who dominate the Central Valley.

In Federalist #10, Madison is stressing that the large districts, especially in the Senate, will create moderate and stable rule because Senators will have to balance a number of factions, giving no one group too much power.
Effect of Largeness

- Society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority.

Fed. #51

Make your country big enough and you will have so many factions that every faction will become a minority unable to dominate. For example while gay rights advocates or right to lifers may be a majority in in certain regions, they are likely to be a minority in the nation as a whole.

In fact, in a large country, even if a faction, such as the poor, happens to be a national majority, it is unlikely the faction will be able to exert its will. This is because the faction will be so spread out over a large distance, it will be nearly impossible for its members to get together, and even if they do, since they come from different areas, there will be as many things that divide them as those that unite them. For example, even if the abortion foes from Mississippi and Oregon manage to get together, they are likely to start fighting over some other issue as a result of their different geographic origins. Perhaps the Oregonites want to protect the logging industry while the Mississppians want to protect the forests, and maybe the group from Mississippi has some racial attitudes that the people from Oregon don’t appreciate - thus the coalition falls apart and nothing gets implemented. This is how the Constitution created a system that resists change.
Effect of Largeness

• In a large country, there will be many groups with many interests and particular outlooks, making it less likely any one group will be a majority.
• Secondly, in a large country, even if a particular faction is a majority, it will be difficult for them to be effective
  – They will not “discover their own strength”.
  – They will not be able “to act in unison”.

This has lead part to the attitude expressed in the phrase “you know, you can’t move Washington”. Creating a nation wide movement involves overcoming huge obstacles created by size and distance. Of course, while technological advances from the automobile to the internet, have made this less true than it might have been in Madison’s day, many of the obstacles that Madison discussed remain a reality.
Conclusion

Along with checks and balances and a bicameral legislature, Fed. #10 shows how the Constitution is basically a \textit{conservative} document, that is one that makes change difficult, prevents rash action, and preserves stability and the status quo.

Thus, we have a system that allows for freedom, but makes it unlikely that we will ever get anything done. It is almost as if apathy has been built into the system to stifle us from acting which allow the status quo (and ultimately the power of the wealthy and well organized) to be maintained.

I do not want too sound too cynical here. First of all, in some ways this has been of great benefit to us. We have had a country that has been quite stable and internally peaceful for over 200 hundred years (minus one great Civil War to eradicate our greatest injustice). Secondly, when things do get really out of whack, the American people do have the capacity to rise up, organize, and forced the powers that be to listen. Take note of the abolitionists who defeated slavery, the women who won the right to vote, those of the Progressive Movement who hemmed in the worst abuses of corporate power in the early 19th century, and those who took to the streets in the 1960’s to fight for civil rights and end an unjust war.
Questions to Ponder

• How effective has the Constitution been in preventing “tyranny of the majority” and in providing stable and effective government?
• Are some groups better able than others to overcome the impediments to action created by a large nation?
• To what extent has the difficulty of achieving political results led to apathy? After all, everyone knows, you can’t move Washington.

To what extent have we been denied political freedom? Do we have too little power to make our voices heard, too much rabble rousing, or have we found just the right balance between chaos and stability?